

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

ADRIAN BAILEY,

Plaintiff,

v.

CIVIL ACTION NO. 1:21-00424

M. RIFE, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Omar J. Aboulhosn for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C.A. § 636(b)(1)(B). Magistrate Judge Aboulhosn submitted to the court his Findings and Recommendation on November 19, 2021, in which he recommended that the district court dismiss plaintiff's complaint as follows: (1) all claims against FCI McDowell; (2) claim of a denial of the right to participate in the BOP's administrative remedy process; (3) claim of unconstitutional verbal threats and harassment in violation of the Eighth Amendment; (4) claim of unconstitutional conditions of confinement in violation of the Eighth Amendment; (5) claim of unconstitutional exposure to tobacco products in violation of the Eighth Amendment; (6) all claims concerning the alleged violation of the Due Process Clause of the Fifth Amendment; and (7) all claims concerning the alleged violation of the First Amendment. Magistrate Judge Aboulhosn further recommended that the court refer this matter back to him for further proceedings regarding

plaintiff's claim of deliberate indifference regarding his medical care.

In accordance with the provisions of 28 U.S.C.A. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Aboulhosn's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Aboulhosn, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **DISMISSES** plaintiff's complaint as follows: (1) all claims against FCI McDowell; (2) claim of a denial of the right to participate in the BOP's administrative remedy process; (3) claim of unconstitutional verbal threats and harassment in violation of the Eighth Amendment; (4) claim of unconstitutional conditions of confinement in violation of the Eighth Amendment; (5) claim of unconstitutional exposure to tobacco products in violation of the Eighth Amendment; (6) all claims concerning the alleged violation of the Due Process Clause of the Fifth Amendment; and (7) all claims concerning the alleged violation of the First Amendment.

The court **REFERS** the matter back to Magistrate Judge Aboulhosn for further proceedings regarding plaintiff's claim of deliberate indifference regarding his medical care.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

IT IS SO ORDERED this 13th day of January, 2022.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge